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Selma Sierra
Bureau of Land Management
Utah State Office
PO Box 45155
Salt Lake City, Utah 84145

August 4, 2008

BY HAND-DELIVERY

Re: Protest of the Bureau of Land Management's Notice of Competitive Oil and Gas Lease Sale of Parcels with High Conservation Value

Dear Director Sierra:

I. Protested Parcels

In accordance with 43 C.F.R. §§ 4.450-2; 3120.1-3, Center for Native Ecosystems ("CNE") and Wild Earth Guardians ("WEG") protests the August 19th sale of the following parcels:

UT0808-081
UT0808-001
UT0808-003
UT0808-007
UT0808-011
UT0808-012
UT0808-013
UT0808-014
UT0808-017
UT0808-025
UT0808-026
UT0808-027
UT0808-028
UT0808-029
UT0808-030
UT0808-034
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UT0808-065
UT0808-066
UT0808-068
UT0808-069
UT0808-070
UT0808-071
UT0808-072
UT0808-073
UT0808-074
UT0808-075
UT0808-076
UT0808-077
UT0808-080
UT0808-088
UT0808-010
UT0808-011

In addition, there are two parcels included the GIS data provided by BLM for the sale in the Vernal Field Office, that have sale ID and serial numbers that do not correspond to those of any of the parcels in the sale notice. If these parcels are being sold as part of this sale, we include them in our protest. The GIS data refers to these parcels in the Sale ID column by the following numbers:

UT0508
UT0508-0

II. Protesting Parties

Center for Native Ecosystems and Wild Earth Guardians have a well-established history of participation in Bureau of Land Management ("BLM") planning and management activities, including participation in Colorado BLM oil and gas leasing decisions and the planning processes for the various Colorado BLM Field Offices. CNE's mission is to use the best available science to participate in policy and administrative processes, legal actions, and public outreach and education to protect and restore native plants and animals in the Greater Southern Rockies.

CNE and WEG's members visit, recreate on, and use lands on or near the parcels proposed for leasing. The staff and members of CNE and WEG enjoy various activities on or near land proposed for leasing, including viewing and studying rare and imperiled wildlife and native ecosystems, hiking, camping, taking photographs, and experiencing solitude. CNE and WEG's staff and members plan to return to the subject lands in the future to engage in these activities, and to observe and monitor rare and imperiled species and native ecosystems. We are collectively committed to ensuring that federal agencies properly manage rare and imperiled species and native ecosystems. Members and professional staff of CNE and WEG are conducting research and advocacy to protect the populations and habitat of rare and imperiled species discussed herein. CNE and WEG's members and staff value the important role that areas of high conservation value, should play in safeguarding rare species and communities and other unique resources on public land. Our members' interests in rare and imperiled species and ecosystems on BLM lands will be adversely affected if the sale of these parcels proceeds as proposed. Oil and gas leasing and subsequent mineral development on the protested parcels, if approved without adequate environmental analysis and appropriate safeguards to minimize negative impacts, is likely to result in significant, unnecessary and undue harm to rare and imperiled species, native ecosystems. The proposed leasing of the protested parcels will harm our members' interests in the continued use of those public lands and the rare and imperiled species they support. Therefore protestors have legally recognizable interests that will be affected and impacted by the proposed action.

III. Affected Resources

The leasing of the protested parcels is likely to result in significant negative impacts to special status species, including the greater sage-grouse, pygmy rabbit, Utah prairie dog, Mexican spotted owl, ferruginous hawk, bald eagle, golden eagle, Southwest willow flycatcher, yellow-billed cuckoo, Bonneville cutthroat trout, Least chub, burrowing owl, short-eared owl, spotted bat, and white-tailed prairie dog. Please see Appendix 1 for a complete listing of the special status species that will be negatively impacted by the proposed leasing of the protested parcels without adequate environmental analysis or appropriate safeguards to minimize negative impacts. This list of species can be found in the column titled 'Special Status Species Habitat in Parcel' in Appendix 1. This list was obtained from the following four sources: 1) a GIS analysis of overlap between the sale parcels and critical habitat for ESA listed species, using the

BLM GIS data on parcel locations, and U.S. Fish and Wildlife Service data on critical habitat, 2) a GIS analysis of the overlap between the sale parcels and occurrences of rare and imperiled species tracked by the Utah Natural Heritage Program (UNHP), using data on parcel locations from BLM, and data on rare species occurrences from UNHP, 3) a GIS analysis of the overlap between sale parcels and draft maps of Utah Division of Wildlife Focus Areas, using data on parcel locations from BLM and on Focus Areas from Utah Division of Wildlife Resources, and 4) the stipulations attached to lease parcels by BLM. The issues raised in the statement of reasons below apply to the leasing of habitat for each species listed in Appendix 1, with the exception of the section IV-C of the statement of reasons below, which applies only to those species listed in Appendix 1 that discusses species listed under the Endangered Species Act.

IV. Statement of Reasons

For the reasons set forth below, the Bureau of Land Management should withdraw all of the protested parcels pending completion of an adequate National Environmental Policy Act ("NEPA") analysis of the environmental impacts of the proposed leasing. BLM should withdraw from the sale all protested parcels because there is credible evidence of resource conflicts and potentially significant environmental impacts which have not been properly analyzed. The BLM should withdraw the protested parcels pending completion of a pre-leasing Environmental Impact Statement.

Center for Native Ecosystems, Wild Earth Guardians, Western Watersheds, and Southern Utah Wilderness Alliance commented on the draft Environmental Assessment UT-040-08-036 for the Cedar City Leasing, on June 30, 2008. In these comments, we express our support for the no-leasing alternative, detail the inadequacy of the programmatic NEPA analysis for the protested parcels contained in the EA, argue that an Environmental Impact Statement is necessary due to the significance of the impacts that will result from the proposed action, and demonstrate that the proposed lease stipulations, notices and other mitigation measures outlined in the proposed action, will not mitigate impacts to special status species to insignificance. We hereby incorporate these comments, attached as Appendix 2, by reference. We have not included the Appendices to our comments in Appendix 2, but also incorporate all of the Appendices that were attached to our comments on the Cedar City Leasing EA when we submitted them to BLM, by reference.

A. National Environmental Policy Act

General Requirements

NEPA requires agencies to take a "hard look" at the environmental effects of major federal actions. The National Environmental Policy Act, 42 U.S.C. § 4332(C) (2008); *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976). The Supreme Court stated that "NEPA does not mandate particular results, but simply prescribes the necessary process." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350-51 (1989). "Federal agencies shall use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these

actions upon the quality of the human environment." 40 C.F.R. §1500.2 (e). Agencies are required to consider alternatives to a proposed action and must not prejudge whether it will take a certain course of action prior to completing the NEPA process. 42 U.S.C. § 4332(C). The courts have made clear that the discussion of alternatives is "the heart" of the NEPA process. *See* 40 C.F.R. §1502.14.

The BLM has not taken the required "hard look" at the potential impacts of the proposed action on any of the special status species listed in Appendix 1. The BLM has not considered an adequate range of alternatives to minimize impacts to these species, including a 'No Surface Occupancy' alternative, or alternatives with lease stipulations and notices that provide varying degrees of protection; in any of the documents to which the proposed leasing is tiered. No NEPA analysis has been prepared for the leasing of the protested parcels in the Vernal and Richfield Field Offices - save outdated RMP documents, and/or new draft RMP documents, that have not been finalized. The Cedar City Field Office prepared a programmatic Environmental Assessment UT-040-08-036 for the leasing of the Cedar City parcels. As discussed in our comments on this EA (Appendix 2) the EA does not take the required "hard look" at the potential impacts of the proposed leasing of the protested parcels. The EA does not analyzed the effects of the proposed leasing on climate change. The EA does not take a 'hard look' at the potential impacts of the proposed leasing on special status species, including but not limited to Utah prairie dog, pygmy rabbit and greater sage-grouse.

a. Significant New Information

None of the NEPA documents, to which the leasing is tiered, adequately address the significant new information now available on the status of the greater sage-grouse, pygmy rabbit, Utah prairie dog and a number of other special status species listed in Appendix 1. An "agency must be alert to new information that may alter the results of its original environmental analysis, and continue to take a 'hard look at the environmental effect of [its] planned action, even after a proposal has received initial approval.'" *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 557 (9th Cir. 2000), quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 374 (1989).

The BLM must supplement its existing environmental analyses when new circumstances 'raise[] significant new information relevant to environmental concerns[.]'" *Portland Audubon Soc'y v. Babbitt*, 998 F.2d 705, 708-09 (9th Cir. 2000). An agency "shall prepare supplements to either draft or final environmental impact statements if . . . there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. § 1502.9(c)(1)(ii). "If there remains 'major Federal actio[n]' to occur, and if the new information is sufficient to show that the remaining action will 'affec[t] the quality of the human environment' in a significant manner or to a significant extent not already considered, a supplemental Environmental Impact Statement ("EIS") must be prepared. *Marsh v. Oregon Natural Resources Council*, 109 S.Ct. 1851, 1859 (1989); *see* 42 U.S.C. § 4332(2)(C).

The BLM has been provided with significant new information relevant to the potential impacts of the proposed leasing on a number of the special status species listed in Appendix 1, including but not limited to greater sage-grouse, pygmy rabbit, Utah prairie dog and white-tailed prairie dog. Center for Native Ecosystems has provided BLM with significant new information on special status species, in each of our previous protests of BLM oil and gas lease sales. For the most part, none of the significant new information provided in previous protests has been considered in any NEPA document that the proposed leasing is tiered to. We hereby incorporate the significant new information section in each of our past protests of UT BLM oil and gas lease sales by reference. We also provided BLM with significant new information on greater sage-grouse, pygmy rabbit, Utah prairie dog, and potential impacts of climate change in our comments on the Cedar City Leasing EA (Appendix 2), and the Appendices to these comments previously submitted to BLM (but not included in Appendix 2 to this protest), which we incorporate by reference. The BLM must address the new scientific information on the greater sage-grouse, pygmy rabbit, and greater sage-grouse in order to comply with NEPA.

b. Inadequate Direct, Indirect, Cumulative Impacts Analysis

None of the NEPA documents, to which the leasing is tied, adequately consider the potential direct, indirect, and cumulative effects of oil and gas drilling on the special status species listed in Appendix 1, particularly greater sage-grouse, pygmy rabbit, Utah prairie dog, Mexican spotted owl and their habitat. At bottom, "the agency's [Environmental Assessment] must give a realistic evaluation of the total impacts and cannot isolate a proposed project, viewing it in a vacuum." *Grand Canyon Trust v. F.A.A.*, 290 F.3d 339, 342 (D.C. Cir. 2002). "An environmental impact statement must analyze not only the direct impacts of a proposed action, but also the indirect and cumulative impacts." *Utahns for Better Transp. v. U.S. Dept. of Transp.*, 305 F.3d 1152, 1163 (10th Cir. 2002) citing *Custer County Action Ass'n v. Garvey*, 256 F.3d at 1024, 1035 (10th Cir. 2001) (internal quotation omitted); *see also* 40 C.F.R. § 1508.25(a)(2) (scope of EIS is influenced by cumulative actions and impact).

Cumulative impact is the impact on the environment, which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. 40 C.F.R. § 1508.7.

There has been no NEPA analysis prepared for the leasing of the protested parcels in the Vernal and Richfield Field Offices - save outdated RMP documents, and/or draft RMPs that have not been finalized. These documents do not contain and adequate site-specific analysis of the direct, indirect and cumulative impacts of leasing these parcels on the special status species listed for each parcel in Appendix 1. The programmatic EA for leasing of the protested parcels in the Cedar City Field Office does not contain an adequate analysis of the direct, indirect and cumulative impacts of the leasing of the protested parcels. Please see our comments on the Cedar City Leasing EA for a detailed discussion of the inadequacies of the NEPA analysis prepared for the protested parcels. It is important to note that the EA only included analysis of direct impacts to species

found on the parcels themselves, but includes no analysis of indirect and cumulative impacts to special status species present on lands adjacent to the lease parcels. Oil and gas development can have a variety of indirect and cumulative impacts on special status species and habitat present on lands adjacent to protested parcels that have never been addressed.

The BLM must address the effects of direct, indirect, and cumulative impacts of oil and gas leasing on the all of the special status listed in Appendix 1, and any special status species that have habitat on adjacent lands, in a NEPA document in order to comply with NEPA.

1. NEPA Required at the Leasing Stage

"The appropriate time for considering the potential impacts of oil and gas exploration and development is when BLM proposes to lease public land for oil and gas purposes . . . ." *Center for Native Ecosystems*, 170 IBLA 332, 345 (2006) (emphasis added); *see Southern Utah Wilderness Alliance* (SUWA), 166 IBLA 270, 276-77 (2005). As the Tenth Circuit clarified, *Park County Resource Council v. United States Dept. of Agriculture* does not excuse BLM from its obligation to analyze consequences of a major federal action prior to leasing. *Pennaco Energy Inc. v. United States Dept. of Interior*, 377 F.3d 1147, 1162 (10th Cir. 2004). *Park County* may allow the agency to forego preparation of an EIS if and when it has prepared an extensive environmental assessment covering the leases in question. This, however, is not the case. The BLM has not prepared site-specific NEPA for the leasing of any of the protested parcels.

a. Irreversible and Irretrievable Commitment of Resources

The appropriate time for preparing an EIS is prior to a decision "when the decision-maker retains a maximum range of options" prior to an action, which constitutes an "irreversible and irretrievable commitment of resources." *Mobile Oil Corp. v. F.T.C.*, 562 F.2d 170, 173 (2d Cir. 1977). Leasing without a No Surface Occupancy stipulation ("NSO") has on-the-ground consequences and is an "irreversible and irretrievable commitment of resources," which requires a NEPA document. *SUWA*, 166 IBLA 270, 276-77 (2005). The court in *Conner v. Burford* addressed oil and gas leasing in the Flathead and Gallatin National Forests. 848 F.2d 1441 (9th Cir. 1988). It held that leases with NSO stipulations did not require an EIS, whereas, leases without NSO stipulations did require an EIS. *Id.* at 1447-51. The Tenth Circuit stated that the critical stage for environmental analysis is the leasing stage, not the APD stage. *Pennaco Energy v. U.S. Dep't of the Interior*, 377 F.3d 1147, 1160 (10th Cir. 2004) ("In the fluid minerals program, this commitment occurs at the point of lease issuance.") Thus, the BLM must complete its NEPA analysis, in which it considers all stages of oil and gas production, at the leasing stage.

b. Resource Management Plans Do Not Constitute Consideration of the Adequate Range of Alternatives

None of the NEPA documents that the proposed leasing is tiered to consider an adequate range of alternatives to leasing the protested parcels. The NEPA documents that the Richfield and Vernal parcels are tiered to, do not contain an adequate range of alternatives to explore the best ways to minimize impacts of the proposed leasing to special status species. In addition, the Cedar City Leasing EA considers only no action, no-leasing and leasing alternatives. It does not consider compromise alternatives with more protective lease stipulations, such as 'no-surface occupancy' or directional drilling alternatives, or a range of lease stipulations providing varying degrees of protection for species like greater sage-grouse, Utah prairie dog, or pygmy rabbit (e.g. varying sizes of buffer zones around key habitat for each species). The purpose of NEPA's alternatives requirement is to ensure that agencies do not undertake projects "without intense consideration of other more ecologically sound courses of action, including shelving the entire project, or of accomplishing the same result by entirely different means." *Envnt'l Defense Fund, Inc. v. U.S. Army Corps of Eng'rs*, 492 F.2d 1123, 1135 (5th Cir. 1974); *see also Or. Envt'l Council v. Kunzman*, 614 F.Supp, 657, 660 (D. Or. 1985) (stating that the alternatives that must be considered under NEPA are those that would 'avoid or minimize' adverse environmental effects). "Federal agencies shall use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment." 40 C.F.R. §1500.2 (e). Alternatives should include reasonable alternatives to a proposed action that will accomplish the intended purpose, are technically and economically feasible, and yet have a lesser impact. *Headwaters, Inc. v. BLM*, 914 F.2d 1174, 1180-81 (9th Cir. 1990); *City of Aurora v. Hunt*, 749 F.2d 1457, 1466-67 (10th Cir. 1984).

Pennaco Energy, Inc. v. Department of the Interior, was a challenge to an IBLA ruling overturning the BLM's decision to lease certain oil and gas parcels. 377 F.3d 1147, 1150 (10th Cir. 2004) The IBLA found the NEPA requirements were not satisfied and remanded the case to the BLM after Pennaco successfully bid on three of the plots. *Id.* The district court reversed the IBLA, ruling for Pennaco. *Id.* The IBLA decision was appealed to the 10th Circuit. *Id.* The court stated that for proposed "major Federal actions significantly affecting the quality of the human environment," agencies must prepare an environmental impact statement (EIS) in which they consider the environmental impact of the proposed action and compare this impact with that of "alternatives to the proposed action." *Id.*; *see* 42 U.S.C. § 4332(2)(C). Further, "in order to provide 'a clear basis for choice among options by the decision maker and the public,' an agency's EIS must consider the "no action" alternative." *Id.*; 40 C.F.R. § 1502.14 ; *see id.* at (d) (EIS shall "[i]nclude the alternative of no action"). *Pennaco*, 377 F.3d at 1150. The court found that because "the leasing decisions had already been made and the leases issued, the EIS did not consider reasonable alternatives available in a leasing decision, including whether specific parcels should be leased, appropriate lease stipulations, and NSO [no surface occupancy] and non-NSO areas." *Id.* at 1154. The court held that the IBLA did not act arbitrary and capricious when it found the BLM did not take the required "hard look" at the environmental impacts of coal bed methane in its existing NEPA documents. *Id.* at 1152, 1162.

BLM must consider a "reasonable range of alternatives," in a site specific NEPA analysis of leasing of each of the protested parcels.

c. DNA's cannot substitute for NEPA Analysis

"'DNAs, unlike EAs and [Findings of No Significant Impact], are not mentioned in [ ] NEPA or in the regulations implementing [ ] NEPA'. . . . Thus, DNAs are not themselves documents that may be tiered to NEPA documents, *but are used to determine the sufficiency of previously issued NEPA documents." SUWA v. Norton*, 457 F. Supp. 2d 1253, 1262 (2006) (emphasis supplied); *Southern Utah Wilderness Alliance,* 164 IBLA at 123 (quoting *Pennaco,* 377 F.3d at 1162).

2. NEPA Requires Analysis of Effectiveness of Mitigation Measures, BLMs FONSI is Arbitrary and Capricious.

a. FONSI Must be Based on NEPA Analysis of Effectiveness Unless the Leases Have NSO Stipulations

When a proposed action will result in impacts to resources, the Agency is obligated to describe what mitigating efforts it could pursue to off-set the damages that would result from the proposed action. *See* 40 C.F.R. § 1502.16(h) (stating that an EIS "shall include discussions of . . . [m]eans to mitigate adverse environmental impacts"). "Mitigation must 'be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated.'" *Carmel-the-Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142, 1154 (9th Cir 1997) (quoting *Robertson v. Methow Valley Citizens Council,* 490 U.S. 332, 353 (1989)).

Agencies must "analyze the mitigation measures in detail [and] explain how effective the measures would be . . . . [a] mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA." *Northwest Indian Cemetery Protective Ass'n v. Peterson*, 764 F.2d 581, 588 (9th Cir. 1985), *rev'd on other grounds*, 485 U.S. 439 (1988). When an agency acknowledges that a proposed project will negatively impact a species, the agency must identify mitigation measures that decrease the negative impacts to the species in the area in question, provide and estimate of how effective the mitigation measures would be if adopted, or give a reasoned explanation as to why such an estimate is not possible. *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1381 (9th Cir. 1998). Further, the agency must make it clear that the mitigating measures in question will be adopted. *Id.*

In *Neighbors of Cuddy Mountain v. United States Forest Service* the court found that while the U.S. Forest Service ("USFS") had acknowledged that a proposed timber sale would negatively impact the redband trout by increasing sedimentation levels, the EIS prepared by the USFS did not identify which (or whether) mitigation measures might decrease sedimentation in the creeks affected by the sale. *Id.* Further, the court noted that "it is also not clear whether any mitigating measures would in fact be adopted. Nor has

the Forest Service provided an estimate of how effective the mitigation measures would be if adopted, or given a reasoned explanation as to why such an estimate is not possible." *Id.* Further, the court found that "The Forest Service's broad generalizations and vague references to mitigation measures in relation to the streams affected by the Grand/Dukes project do not constitute detail as to mitigation measures that would be undertaken, and their effectiveness, that the Forest Service is required provide."

None of the NEPA documents that the proposed leasing is tiered to contain an analysis of the likely effectiveness of mitigation measures applied as lease stipulations, lease notices, or conditions of approval of APDs. Our comments on the Cedar City Leasing EA provide evidence that the mitigation measures proposed to protect greater sage-grouse, Utah prairie dog, and pygmy rabbit are not likely to be effective. This is also true of mitigation measures proposed to protect all of the special status species listed in Appendix 1. Depsite evidence that suggests mitigation measures may not mitigate impacts to insignificance, BLM provides little or no rational for its assertion that assorted lease stipulations, notices and COAs will mitigate impacts to insignificance.

b. NEPA Analysis of Effectiveness of Mitigation Measures Must Have Scientific Integrity

Merely listing mitigation measures, without analyzing the effectiveness of the measures, is contrary to NEPA. *Northwest Indian Cemetery Protective Ass'n v. Peterson*, 764 F.2d 581, 588 (9th Cir. 1985*), rev'd on other grounds*, 485 U.S. 439 (1988). The BML must evaluate the effectiveness of the mitigation measures used in oil and gas leasing with the best available science. "The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." 40 C.F.R. §1500.1(b). The BLM is required to use "best available science and supporting studies conducted in accordance with sound and objective scientific practices." Thus, if there is scientific uncertainty NEPA imposes the mandatory duties to (1) disclose the scientific uncertainty; (2) complete independent research and gather information if no adequate information exists unless costs are exorbitant or the means of obtaining the information are not known; and (3) evaluate the potential, reasonably foreseeable impacts in the absence of relevant information. *See* 40 C.F.R. §1502.22.

The BLM is "proceeding in the face of uncertainty," contrary to the NEPA regulations. *Save Our Ecosystems v. Clark*, 747 F.2d at 1244.

c. BLM Must Have the Resources to Implement Mitigation

NEPA requires that the "possibility of mitigation" should not be relied upon as a means to avoid further environmental analysis. *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*; *see Davis v. Mineta*, 302 F.3d 1104, 1125 (10th Cir. 2002). The Tenth Circuit found that the "Forty Questions" are "persuasive authority offering interpretive guidance" on NEPA. *Id.*

d. Must Appropriately Deal With Expert Comments

The BLM does not address the current expert opinions in the NEPA documents on which it relies. Failure to disclose and thoroughly respond to differing scientific views violates NEPA. The agency is required to perform an environmental analysis that includes this information prior to approving any proposed action, in this case the lease sale. *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 334, 354 (1989) (EIS should reflect critical views of others to whom copies of the draft were provided and respond to opposing views); *Seattle Audubon Society v. Lyons*, 871 F.Supp. 1291, 1381 (W.D. Wash. 1994) (An EIS must "disclose scientific opinion in opposition to the proposed action, and make a good faith, reasoned response to it."). The BLM has not appropriately dealt with expert comments on the potential impacts of the proposed leasing and the inadequacy of mitigation measures proposed to protect special status species.

e. BLM Must Use Adequate Science

The BLM must use adequate science in their environmental analysis. The BLM must "insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements." 40 C.F.R. § 1502.24; 40 C.F.R. § 1500.1(b); *see also* The Data Quality Act; BLM Information Quality Guidelines, http://www.blm.gov/nhp/efoia/data_quality/guidelines.pdf.\

The BLM is ignoring the best available science on the impacts of oil and gas development on special status species, and the adequacy of proposed mitigation measures, particularly with respect to greater sage-grouse, pygmy rabbit, and Utah prairie dog.

B. Federal Land Policy and Management Act

1. Unnecessary and Undue Degradation

The BLM has a duty under the Federal Land Policy and Management Act ("FLPMA") to prevent unnecessary and undue degradation to the lands under its management. "In managing the public lands the [Secretary of Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." 43 U.S.C. § 1732(b). "The court in *Mineral Policy Center v. Norton* [found] that in enacting FLPMA, Congress's intent was clear: Interior is to prevent, not only unnecessary degradation, but also degradation that, while necessary . . . is undue or excessive.") *Mineral Policy Center v. Norton*, 292 F.Supp.2d 30, 43 (D.D.C. 2003).

Leasing the protested parcels will result in unnecessary and undue degradation to special status species and their habitats.

2. Minimize Adverse Effects

The BLM must minimize the adverse effects on the special status species listed in Appendix 1 in order to comply with FLPMA. "[T]he using department shall . . . minimize adverse impacts on the natural, environmental, scientific, cultural, and other resources and values (including fish and wildlife habitat) of the public lands involved. 43 U.S.C. §1732(d)(2)(a). "If there are significant environmental effects that cannot be mitigated, an EIS must be prepared even if there is no unnecessary or undue degradation of the public lands." *Kendall's Concerned Area Residents*, 129 IBLA 130, 138 (1994); 42 U.S.C. § 4332(2)(C) (1988). "If there is unnecessary or undue degradation, it must be mitigated." *Kendall's Concerned Area Residents*, at 138; *see* 43 CFR 3809.2-1(b). "If unnecessary or undue degradation cannot be prevented by mitigating measures, BLM is required to deny approval of the plan." *Kendall's Concerned Area Residents*, at 138; *see* 43 CFR § 3809.0-3(b); *Department of the Navy*, 108 IBLA 334, 336 (1989); *see* 43 U.S.C. § 1732(b) (1988); 43 CFR § 3809.0-5(k).

The BLM has failed to do so.

C. Endangered Species Act

1. Consultation

Under the Endangered Species Act ("ESA"), the BLM must consult with FWS before offering parcels for lease because the Mexican spotted owl, yellow-billed cuckoo, Utah prairie dog, Southwestern willow flycatcher and several other species are listed as under the ESA and may be affected by the proposed action. The ESA consultation process is triggered when the surface agency is notified of the pending lease sale. *Connor v. Buford*, 848 F.2d 1441,1452 (1988). In *Connor*, the BLM could not issue oil and gas leases until the Fish and Wildlife Service ("FWS") analyzed consequences of all stages of the leasing plan in the Biological Opinion ("BO"). *Id.* at 1455. ESA's consultation requirement is not met by "incremental steps" and by mere notification of the potential presence of endangered species. *Id.* at 1452-58; The court held that "agency action [for purposes of developing a biological opinion] . . . entails not only leasing but leasing and all post-leasing activities through production and abandonment." *Id.* at 1453. Contrary to the BLM position that relies upon the *Wyoming Outdoor Council v. Bosworth*,the Tenth Circuit stated that the critical stage for environmental analysis is the leasing stage, not the APD stage. *Pennaco Energy v. U.S. Dep't of the Interior*, 377 F.3d 1147, 1160 (10th Cir. 2004). The BLM and FWS must conduct site-specific consultation at the leasing stage that considers not only direct impacts to species on lease parcels, but also indirect and cumulative impacts to listed species and their habitat both on lease parcels and on adjacent lands. The BLM and FWS must consider not only impacts to survival of the species, but also impacts to recovery. The BLM and FWS have failed to meet these requirements under the ESA with respect to Utah prairie dog, Mexican spotted owl, Southwest willow flycatcher, yellow-billed cuckoo, and other listed species, particularly on lands adjacent to lease parcels.

D. BLM Has the Discretion Not to Lease

Under the statutory and regulatory provisions authorizing this lease sale, the BLM has full discretion whether or not to offer these lease parcels for sale. The Mineral Leasing Act ("MLA"), 30 U.S.C. § 226(a), provides that "[a]ll lands subject to disposition under this chapter which are known or believed to contain oil and gas deposits may be leased by the Secretary." (emphasis added). The Supreme Court has concluded that this "left the Secretary discretion to refuse to issue any lease at all on a given tract." *Udall v. Tallman*,380 U.S. 1, 4 (1965); *see also Wyoming ex rel. Sullivan v. Lujan*, 969 F.2d 877 (10th Cir.1992); *McDonald v. Clark*, 771 F.2d 460, 463 (10th Cir. 1985) ("While the [Mineral Leasing Act] gives the Secretary the authority to lease government lands under oil and gas leases, this power is discretionary rather than mandatory."); *Burglin v. Morton*, 527 F.2d 486, 488 (9th Cir. 1975).

Submitting a leasing application vests no rights to the applicant or potential bidders. The BLM retains the authority not to lease. "The filing of an application which has been accepted does not give any right to lease, or generate a legal interest which reduces or restricts the discretion vested in the Secretary whether or not to issue leases for the lands involved." *Duesing v. Udall*, 350 F.2d 748, 750-51 (D.C. Cir. 1965), *cert. den.* 383 U.S. 912 (1966); *see also Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1230 (9th Cir. 1988); *Pease v. Udall*, 332 F.2d 62 (9th Cir. 1964); *Geosearch, Inc. v. Andrus*, 508 F. Supp. 839 (D.C. Wyo. 1981).

The arguments laid out in detail above demonstrate that exercise of the discretion not to lease the protested parcels, is appropriate and necessary. Withdrawing the protested parcels from the lease sale until BLM has met its legal obligations to conduct and adequate NEPA analysis is a proper exercise of BLM's discretion under the MLA. The BLM has no legal obligation to lease the disputed parcels and is required to withdraw them until the agencies have complied with applicable law.

V. CONCLUSION & REQUEST FOR RELIEF

CNE therefore requests that the BLM withdraw the protested parcels from the August Sale.

Sincerely,

Megan Corrigan
Staff Biologist
Center for Native Ecosystems

Appendix 1
(Affected Resources)

Parcel ID in Sale Notice	Sale ID in GIS Data	Field Office	Special Status Species Habitat in Parcel	UNHP Global Rank	UNHP State Rank	Special Status	ESA Status
UT0808-081	UT081	Richfield	ferruginous hawk habitat (UT-LN-26), golden eagle habitat (UT-LN-27)				
			Bald Eagle	G5	S1B,S3N	S-ESA	LT
			Southwestern Willow Flycatcher	G5T1T2	S1B	S-ESA	LE
			Greater Sage-grouse	G4	S2?	SPC	
			American White Pelican	G3	S1B	SPC	
			Pygmy Rabbit	G4	S2	SPC	
			Ferruginous Hawk	G4	S2S3B,S2N	SPC	
			Utah Prairie-dog	G1	S1	S-ESA	LT
			Utah Prairie-dog	G1	S1	S-ESA	LT
			Otter Creek Pyrg	G1	S1	SPC	
			Northern Goshawk	G5	S3?	CS	
			Long-billed Curlew	G5	S2S3B	SPC	
			Bald Eagle	G5	S1B,S3N	S-ESA	LT
			Greater Sage-grouse	G4	S2?	SPC	
			Utah Prairie-dog	G1	S1	S-ESA	LT
			Otter Creek Pyrg	G1	S1	SPC	
			American Three-toed Woodpecker	G5	S2S3	SPC	
			Long-billed Curlew	G5	S2S3B	SPC	
			Western Toad	G4	S2S3	SPC	
			Western Toad	G4	S2S3	SPC	
			Western Toad	G4	S2S3	SPC	
			Western Toad	G4	S2S3	SPC	
			Western Toad	G4	S2S3	SPC	
			Western Toad	G4	S2S3	SPC	
			Western Toad	G4	S2S3	SPC	
			UDWR Focus Area - valuable wildlife habitats and values including sage grouse lek and year round use, Utah prairie dog habitat, bald eagle roost sites				
			crucial greater sage-grouse brood habitat - Parker Mountain Johns Valley				
UT0808-001	UT001	Cedar City	raptor habitat UT-LN-07, utah sensitive species UT-LN-37				
			UDWR Focus Area				
UT0808-003	UT003	Cedar City	raptor habitat UT-LN-07, utah sensitive species UT-LN-37				
			UDWR Focus Area				
UT0808-007	UT007	Cedar City	raptor habitat UT-LN-07, utah sensitive species UT-LN-37				
			UDWR Focus Area, large area with diverse habitats and many wildlife values, including Utah prairie dog habitat, bald eagle and other raptor roosting, peregrine foraging.				
UT0808-011	UT011	Cedar City	raptor habitat UT-LN-07, utah sensitive species UT-LN-37				

			UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat
UT0808-012	UT012	Cedar City	raptor habitat UT-LN-07, utah sensitive species UT-LN-37, Utah Prairie Dog T&E 08
			UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat
UT0808-013	UT013	Cedar City	raptor habitat UT-LN-07, utah sensitive species UT-LN-37, Utah Prairie Dog T&E 08
			UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat
UTU0808-014	UT014	Cedar City	raptor habitat UT-LN-07, utah sensitive species UT-LN-37
			UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat
UT0808-017	UT017	Cedar City	raptor habitat UT-LN-07, utah sensitive species UT-LN-37
			UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat
UT0808-025	UT025	Cedar City	raptor habitat UT-LN-07, utah sensitive species UT-LN-37

			UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat				
UT0808-026	UT026	Cedar City	raptor habitat UT-LN-07, utah sensitive species UT-LN-37, bald eagle T&E-01				
			UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat				
UT0808-027	UT027	Cedar City	raptor habitat UT-LN-07, utah sensitive species UT-LN-37, bald eagle T&E-01, Utah prairie dog T&E08				
			UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat				
UT0808-028	UT028	Cedar City	raptor habitat UT-LN-07, utah sensitive species UT-LN-37				
			UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat				
UT0808-029	UT029	Cedar City	raptor habitat UT-LN-07, peregrine falcon habitat UT-LN-11, golden eagle habitat UT-LN-17, Utah sensitive species UT-LN-37, fisheries UT-LN-87, bald eagle T&E-01, Utah prairie dog T&E08				
			BONNEVILLE CUTTHROAT TROUT	G4T2	S4	1999-09-21	CS
			TOWNSEND'S BIG-EARED BAT	G4	S3S4	1994-09-06	SP/SD
			UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat				

UT0808-030	UT030	Cedar City	raptor habitat UT-LN-07, peregrine falcon habitat UT-LN-11, golden eagle habitat UT-LN-17, Utah sensitive species UT-LN-37, Utah sensitive species (yellow-billed cuckoo) UT-LN-86, fisheries UT-LN-87, bald eagle T&E-01, Utah prairie dog T&E08				
			Greater Sage-grouse	G4	S2?	SPC	
			Bald Eagle	G5	S1B,S3N	S-ESA	LT
			Ferruginous Hawk	G4	S2S3B,S2N	SPC	
			Burrowing Owl	G4	S3B	SPC	
			Bonneville Cutthroat Trout	G4T4	S3?	CS	
			Least Chub	G1	S1	CS	
			Short-eared Owl	G5	S2	SPC	
			UDWR Focus Area, below Minersville Reservoir is suitable habiat for southwestern willow flycatcher, bald eagle roost sites, etc.				
			crucial greater sage-grouse brood habitat - Minersville Reservoir				
			UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat				
UT0808-034	UT034	Cedar City	raptor habitat UT-LN-07, utah sensitive species UT-LN-37, Utah prairie dog T&E 08				
			UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat				
UT0808-035	UT035	Cedar City	raptor habitat UT-LN-07, utah sensitive species UT-LN-37, Utah sensitive species (pygmy rabbit) UT-LN-58, Utah prairie dog T&E 08				
			UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat				
			PLATEAU STRIPED WHIPTAIL	G5	S2S3	1981-05-12	SP/SD
UT0808-036	UT036	Cedar City	raptor habitat UT-LN-07, utah sensitive species UT-LN-37				

			UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat				
UT0808-037	UT037	Cedar City	raptor habitat UT-LN-07, utah sensitive species UT-LN-37, Utah sensitive species (yellow-billed cuckoo) UT-LN-86, fisheries UT-LN-87				
UT0808-039	UT039		raptor habitat UT-LN-07, peregrine falcon habitat UT-LN-11, utah sensitive species UT-LN-37, Utah sensitive species (yellow-billed cuckoo) UT-LN-86, fisheries UT-LN-87, bald eagel, T&E-01				
			UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat				
UT0808-040		Cedar City	raptor habitat UT-LN-07, Utah sensitive species UT-LN-37, Utah sensitive species (yellow-billed cuckoo) UT-LN-86, Mexican spotted owl T&E-06				
UT0808-041		Cedar City	raptor habitat UT-LN-07, Utah sensitive species UT-LN-37, Utah sensitive species (yellow-billed cuckoo) UT-LN-86, Mexican spotted owl T&E-06, fisheries UT-LN-87, bald eagle T&E-01				
UT0808-042	UT042	Cedar City	raptor habitat UT-LN-07, Utah sensitive species UT-LN-37, Utah sensitive species (yellow-billed cuckoo) UT-LN-86, Mexican spotted owl T&E-06, fisheries UT-LN-87, bald eagle T&E-01				
			BONNEVILLE CUTTHROAT TROUT	G4T2	S4	1996-10-16	CS
UT0808-043		Cedar City	raptor habitat UT-LN-07, Utah sensitive species UT-LN-37, Utah sensitive species (yellow-billed cuckoo) UT-LN-86, Mexican spotted owl T&E-06, fisheries UT-LN-87, bald eagle T&E-01				
UT0808-045	UT045	Cedar City	raptor habitat UT-LN-07, Utah sensitive species UT-LN-37, Bald Eagle T&E01, Utah prairie dog T&E08				
			UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat				
UT0808-046	UT046	Cedar City	raptor habitat UT-LN-07, Utah sensitive species UT-LN-37, Bald Eagle T&E01, Utah prairie dog T&E08				

			UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat
UT0808-047	UT047	Cedar City	raptor habitat UT-LN-07, golden eagle habitat UT-LN-17, Utah sensitive species UT-LN-37, Bald Eagle T&E01, Utah prairie dog T&E08
			UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat
UT0808-048	UT048	Cedar City	raptor habitat UT-LN-07, Utah sensitive species UT-LN-37, bald eagle, T&E-01
			UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat
UT0808-049		Cedar City	raptor habitat UT-LN-07, Utah sensitive species UT-LN-37
			UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat
UT0808-050			raptor habitat UT-LN-07, Utah sensitive species UT-LN-37
			UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat
UT0808-051	UT050	Cedar City	bald eagle winter habitat UT-S-07, raptor habitat UT-LN-07, Utah sensitive species UT-LN-37, bald eagle T&E-01, Utah prairie dog T&E-08

			UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat
UT0808-053	UT053	Cedar City	bald eagle winter habitat UT-S-07, raptor habitat UT-LN-07, Utah sensitive species UT-LN-37, bald eagle T&E-01
			UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat
UT0808-055	UT055	Cedar City	raptor habitat UT-LN-07, peregrine falcon habitat UT-LN-11, Utah sensitive species UT-LN-37
			UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat
UT0808-056			raptor habitat UT-LN-07, Utah sensitive species UT-LN-37, T&E 06 Mexican Spotted Owl
UT0808-058		Cedar City	raptor habitat UT-LN-07, peregrine falcon UT-LN-11, Utah sensitive species UT-LN-37, T&E 06 Mexican Spotted Owl
UT0808-059		Cedar City	raptor habitat UT-LN-07, peregrine falcon UT-LN-11, Utah sensitive species UT-LN-37, T&E 06 Mexican Spotted Owl
UT0808-065		Cedar City	raptor habitat UT-LN-07, utah sensitive species UT-LN-37, Utah Prairie Dog T&E 08
			UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat
UT0808-066		Cedar City	raptor habitat UT-LN-07, utah sensitive species UT-LN-37, Utah Prairie Dog T&E 08

		UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat
UT0808-068	Cedar City	raptor habitat UT-LN-07, utah sensitive species UT-LN-37, Utah Prairie Dog T&E 08
		UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat
UT0808-069	Cedar City	raptor habitat UT-LN-07, utah sensitive species UT-LN-37, Mexican spotted owl T&E-06
UT0808-070	Cedar City	raptor habitat UT-LN-07, utah sensitive species UT-LN-37, Utah Prairie Dog T&E 08
		UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat
UT0808-071	Cedar City	raptor habitat UT-LN-07, utah sensitive species UT-LN-37, Utah Prairie Dog T&E 08, Mexican spotted owl T&E-06
		Mexican Spotted Owl Designated Critical Habitat
		UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat
UT0808-072	Cedar City	raptor habitat UT-LN-07, utah sensitive species UT-LN-37, Utah Prairie Dog T&E 08, Mexican spotted owl T&E-06
		UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat

UT0808-073		Cedar City	raptor habitat UT-LN-07, utah sensitive species UT-LN-37, Mexican spotted owl T&E-06				
UT0808-074		Cedar City	raptor habitat UT-LN-07, peregrine falcon habitat UTLN-11, Utah sensitive species UT-LN-37, Utah sensitive species (yellow-billed cuckoo) UT-LN-86, Southwestern willow flycatcher T&E-07, Mexican spotted owl T&E-06				
			Mexican Spotted Owl Designated Critical Habitat				
			UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat				
UT0808-075		Cedar City	raptor habitat UT-LN-07, Utah sensitive species UT-LN-37, Mexican spotted owl T&E-06, California Condor T&E-10				
			Mexican Spotted Owl Designated Critical Habitat				
UT0808-076		Cedar City	raptor habitat UT-LN-07, Utah sensitive species UT-LN-37, California Condor T&E-10				
UT0808-077		Cedar City	raptor habitat UT-LN-07, Utah sensitive species UT-LN-37, special status plants, not federally listed UT-LN-29				
			UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat				
UT0808-080		Cedar City	raptor habitat UT-LN-07, golden eagle habitat UT-LN-17, Utah sensitive species UT-LN-37, Utah prairie dog T&E-08				
			UDWR Focus Area - large area with many diverse habitats, including Utah prairie dog habitat, bald eagle and other raptor Cedar City/Parowan, Parowan Front, Hurricane Cliffs, New Castle areas - Large area with many diverse habitats and many wildlife values. There are riparian /wetland areas, critical deer winter range, Utah prairie dog habitat, bald eagle and other raptor roosting habitat, peregrine foraging habitat				
UT0808-088	UT088	Vernal	raptor habitat UT-LN-07, golden eagle habitat UT-LN-17, peregrine falcon habitat UT-LN-30				
			Greater Sage-grouse	G4	S2?	SPC	
			Greater Sage-grouse	G4	S2?	SPC	
			Spotted Bat	G4	S2S3	SPC	
			Brown (Grizzly) Bear	G4	SX	S-ESA	LT
			Smooth Greensnake	G5	S2	SPC	
			Burrowing Owl	G4	S3B	SPC	
			UDWR Focus Area, rich avian biodiversity				

			crucial greater sage-grouse brood habitat - Diamond Mountain				
			Red Mountain Dry Fork Complex Area of Critical Environmental Concern				
UT0808-010		Vernal	raptor habitat UT-LN-07, bald eagle T&E-01				
UT0808-011		Vernal	raptor habitat UT-LN-07, bald eagle T&E-01				
N/A	UT0508	Vernal	crucial and substantial value greater sage-grouse brood habitat				
N/A	UT0508-0	Vernal	Greater Sage-grouse	G4	S2?	SPC	
N/A	UT0508-0		Burrowing Owl	G4	S3B	SPC	
N/A	UT0508-0		White-tailed Prairie-dog	G4	S2?	SPC	
N/A	UT0508-0		Ferruginous Hawk	G4	S2S3B,S2N	SPC	
N/A	UT0508-0		Greater Sage-grouse	G4	S2?	SPC	
N/A	UT0508-0		Burrowing Owl	G4	S3B	SPC	
N/A	UT0508-0		White-tailed Prairie-dog	G4	S2?	SPC	
N/A	UT0508-0		Ferruginous Hawk	G4	S2S3B,S2N	SPC	
N/A	UT0508-0		Greater Sage-grouse	G4	S2?	SPC	
N/A	UT0508-0		Greater Sage-grouse	G4	S2?	SPC	
N/A	UT0508-0		Spotted Bat	G4	S2S3	SPC	
N/A	UT0508-0		Brown (Grizzly) Bear	G4	SX	S-ESA	LT
N/A	UT0508-0		Smooth Greensnake	G5	S2	SPC	
N/A	UT0508-0		Burrowing Owl	G4	S3B	SPC	

Appendix 2
(CNE et. al. Comments on Cedar City Leasing EA)

WildEarth Guardians * Center for Native Ecosystems * Southern Utah Wilderness Alliance * Western Watersheds Project

June 30, 2008

Terry Catlin
Cedar City Leasing EA
Bureau of Land Management
440 West 200 South, Suite 500
Salt Lake City, Utah 84101
Email: Terry_Catlin@blm.gov

VIA ELECTRONIC MAIL

Re: Comments on UT-040-08-036, Utah Oil and Gas Leasing EA

Dear Terry Catlin,

These comments are submitted on behalf of WildEarth Guardians, Center for Native Ecosystems, Southern Utah Wilderness Alliance, Western Watersheds Project and our members. We endorse the No Leasing Alternative in the Utah Oil and Gas Leasing Environmental Assessment (EA) UT-040-08-036. The planning area – the eastern portion of the Cedar City Field Office – contains wildlife habitats and natural ecosystems that are too fragile, imperiled, and valuable to be leased for oil and gas. Notwithstanding the additional protections provided under the Proposed Action, there will be substantial and irreversible adverse environmental impacts if leasing is allowed to proceed.

One of our principal concerns is imperiled wildlife and plants, including species already federally listed under the Endangered Species Act – such as the Utah prairie dog – as well as biologically imperiled species that are not yet listed but warrant such protection. These include the greater sage-grouse, pygmy rabbit, Frisco buckwheat, Brian Head mountainsnail, and others.

The Proposed Action could result in leasing of hundreds of thousands of acres within your large planning area (comprising nearly one million acres). Given the scope of the Proposed Action, and the fragile and valuable resources at stake, an Environmental Impact Statement (EIS) is clearly warranted. An environmental assessment is inadequate for the analysis at issue. As indicated in the EA (at p. 10), the previous EIS and Resource Management Plan is more than 20 years old and failed to anticipate the human pressures within the planning area. These pressures are immense, on both private and public lands, and they are taking their toll on wildlife and plants in the planning area.

The EA also fails to justify the purpose and need for the Proposed Action. The Reasonable Foreseeable Development (RFD) Scenario in the EA for the next ten years is three oil and gas wells per year, which is a continuation of the previous RFD. Between 1988 and 2006, only three oil and gas wells were drilled on public lands in the Cedar City

Field Office, and none were productive (EA at p. 37). In addition, the EA indicates that the likelihood of usable discoveries of fossil fuel is low (at p. 58). The BLM has full discretion not to lease these lands and there is clearly no pressing public interest in doing so, given the suspected grave environmental harms versus the likely insignificant contribution to the fossil fuel supply.

Although the likelihood of commercially viable quantities of oil and gas may currently appear low, the process of exploration for oil and gas, particularly seismic exploration, can have substantial environmental impacts. In addition, while the EA emphasizes the low projected footprint for oil and gas drilling in the planning area, what is of paramount importance is where the disturbance occurs. A 2-6 acre wellsite ½ mile from one of the last remaining viable complexes of Utah prairie dogs could result, for example, in increased truck traffic and consequent mortality of prairie dogs, and the proliferation of noxious weeds which degrade prairie dog foraging habitat (and consequently harm reproduction).

In addition, we are wary of projections of low oil and gas activity given the substantial industry interest in this area. The EA indicates,

> Of the 960,000 acres of federal mineral lands considered in this EA, approximately half has either been leased (374,000 acres) or has the lease issuance awaiting protest resolution (108,000 acres). Of the remaining 478,000 acres, approximately one-quarter (121,000 acres) has had industry expressed interest.

See EA at p. 8. Technological developments may result in the commercial viability of this area for oil and gas. Indeed, the BLM justifies the Proposed Action on the basis that:

> Continued leasing is necessary to maintain options for production of oil and gas as companies seek new areas for production or attempt to locate and develop previously unidentified, inaccessible or uneconomical reserves.

See EA at p. 5. Therefore, despite the low level of activity in past decades, oil and gas activity and concomitant environmental degradation may escalate in the planning area, particularly given sky-rocketing prices of oil. The BLM fails in this EA to consider that the price of oil is currently over $140/barrel, in contrast to the prior period of 1988-2006. It is important for the BLM to take a precautionary approach: there are environmental qualities of high value in the planning area and there are known risks from oil and gas development. The BLM should err on the side of precaution and adopt the No Leasing Alternative.

Climate change analysis

The EA excludes climate change from its analysis, stating:

> Furthermore, although climate change is an acknowledged factor increasingly affecting many resources and management decisions, the alternatives as described below would not contribute to climate change to a degree that detailed analysis is needed or justified.

See EA at p. 7. This argument is illegal and irrational. It is irrational in that it is the same logic as saying that because no one cigarette will cause the smoker's death, but rather the cumulative impacts of thousands of cigarettes will cause the death, it is safe to smoke the next cigarette.

Rather, BLM must consider climate change in its analysis. It must consider that the greenhouse effect, global warming, and climate change from anthropogenic greenhouse gas emissions such as carbon dioxide, methane and nitrous oxide, is as well understood as any phenomenon in the planetary sciences. The decision to open these lands to oil and gas extraction will contribute to climate change in a variety of ways. These include emissions of carbon dioxide and nitrous oxides from mobile sources during exploration; the emissions of carbon dioxide, carbon monoxide, nitrous oxides and methane during extraction, processing, and transportation from drilling, extraction and processing equipment, such as drilling rigs, compressors, pumps and other equipment; the emissions of methane during extraction, processing and transportation from escaped "natural gas"; and the emissions of carbon dioxide, carbon monoxide, nitrous oxides and methane during the use of the extracted oil and gas such as the emissions of carbon dioxide, carbon monoxide, nitrous oxides and methane from natural gas fired power plants and the emissions of carbon dioxide, carbon monoxide, and nitrous oxides from mobile sources burning natural gas or gasoline that comes from petroleum. Thus, the decision to open these lands to oil and gas leasing will result in emissions of greenhouse gases.

The Intergovernmental Panel on Climate Change (IPCC) has recently released Climate Change 2007: The Physical Science Basis Summary for Policymakers (Alley 2007), which summarizes many of the major findings. Some of the science and policy implications are discussed briefly below. Scientists have demonstrated that anthropogenic greenhouse gas emissions have altered the energy balance of the earth by 0.85 ± 0.15 watts per square meter (Hansen et al. 2005); due to the lag time in the climate system, this energy imbalance commits the earth to additional warming of .6° C (1° F) of warming that is already "in the pipeline," even absent additional greenhouse gas emissions (Hansen et al. 2005).

Leading scientists are now able to tell us, with a high degree of certainty, that additional warming of more than 2.0- 3.0° C (2.7- 3.8° F) above year 2000 levels will constitute "dangerous climate change," with particular reference to sea level rise and species extinction (Hansen 2006; Hansen et al. 2006a,b). The "tripwire" between keeping warming above 2000 levels to less than 1.0° C (1.8° F) and experiencing warming of more than 2.0- 3.0° C (3.8-5.4° F) above 2000 levels depends on a very small amount of anthropogenic greenhouse gas emissions because warming of more than 1.0° C (1.8° F) above 2000 levels will likely result in climate feedbacks that will result in 2.0 to 3.0° C additional warming even without substantial additional greenhouse gas emissions. Furthermore, scientists are able to describe the likely atmospheric greenhouse gas level

"ceiling" that must not be exceeded in order to prevent additional warming of more than 1° C (1.8° F) above year 2000 levels (Hansen 2006; Hansen et al. 2006a,b): they told us in the past that the ceiling was approximately 450-475 ppm of carbon dioxide, depending upon levels of other greenhouse gases, such as methane and nitrous oxide.

In order to stay within the 450-475 ppm ceiling, emissions must follow what has become known as the "alternative," rather than the "business as usual," greenhouse gas emissions scenario (Hansen 2006; Hansen et al. 2006a,b; Hansen and Sato 2004). In the business as usual scenario, carbon dioxide emissions continue to grow at about 2% per year, and other greenhouse gases such as methane and nitrous oxide also continue to increase (Hansen 2006; Hansen et al. 2006a,b). In the alternative scenario, by contrast, carbon dioxide emissions decline moderately between now and 2050, and much more steeply after 2050, so that atmospheric carbon dioxide never exceeds 475 parts per million (Hansen 2006; Hansen et al. 2006a,b). The alternative scenario was thought, in the past, to be able to limit global warming to less than an additional 1° C in this century (Hansen 2006; Hansen et al. 2006a,b).

Unfortunately, society so far has not followed the alternative scenario. Instead, carbon dioxide emissions have continued to increase by 2% per year since 2000 (Hansen 2006; Hansen et al. 2006a,b). If this growth continues for just ten more years, the 35% increase in CO2 emissions between 2000 and 2015 will make it unlikely we can achieve the alternative scenario (Hansen 2006; Hansen et al. 2006a,b).

Just ten more years on current greenhouse gas emissions trajectories will essentially commit us to climate disaster. Dr. James E. Hansen, Director of the NASA Goddard Institute for Space Studies, and NASA's top climate scientist, has stated: "In my opinion there is no significant doubt (probability > 99%) that . . . additional global warming of 2° C would push the earth beyond the tipping point and cause dramatic climate impacts including eventual sea level rise of at least several meters, extermination of a substantial fraction of the animal and plant species on the planet, and major regional climate disruptions" (Hansen 2006:30). In order to avoid truly unacceptable consequences of global warming, we must stop the growth of greenhouse gas emissions, and, in relatively short order, begin reducing them.

In June 2005, the National Academies of Science of major nations around the world (including Brazil, Canada, China, France, Germany, India, Italy, Japan, Russian, the United Kingdom and the United States) signed a joint statement regarding climate change. It said, in part: "The scientific understanding of climate change is now sufficiently clear to justify nations taking prompt action...Action taken now to reduce significantly the build-up of greenhouse gases in the atmosphere will lessen the magnitude and rate of climate change. A lack of full scientific certainty about some aspects of climate change is not a reason for delaying an immediate response that will, at a reasonable cost, prevent dangerous anthropogenic interference with the climate system."

Global warming represents the most significant and pervasive threat to the future of biodiversity worldwide, affecting both terrestrial and marine species from the tropics to the poles. Peer-reviewed studies have concluded that 35 percent of species could be committed to extinction by the year 2050 if current emissions trajectories continue and that these extinctions could be significantly reduced if greenhouse gas emissions fall (Thomas 2004).

Entire cultures and ways of life around the globe, including in the Arctic, are at risk from global warming. Many Arctic peoples, such as the Inuit, who rely upon hunting for their primary food supply, are suffering from these changes, as well as from a reduction in weather predictability and travel safety, and face "serious challenges to human health and food security, and possibly even the survival of some cultures" (ACIA 2004). Some communities and industrial facilities in coastal zones are already being forced to relocate due to severe coastal erosion as rising sea level and a reduction in sea ice allow higher waves and storm surges to reach the shore (ACIA 2004).

Calcifying marine species such as coral may be particularly hard-hit by a double impact of both increasing ocean temperatures and increasing ocean acidification from increasing levels of dissolved carbon dioxide in seawater (Hughes 2003).

The impacts to biological diversity go hand-in-hand with the impacts to human society. The World Health Organization estimates that as of the year 2000, 154,000 lives are already lost annually due to global warming (WHO 2002). In the Harvard Medical School publication Climate Change Futures: Health, Ecological, and Economic Dimensions, experts predict a number of profound consequences for human health if worldwide greenhouse gas emissions continue on current trajectories (Epstein and Mills 2005). Predictions include an increase in diseases such as malaria, West Nile Virus, and Lyme disease, as well as an increase in pollen production, allergies, and allergic diseases such as asthma (Epstein and Mills 2005).

Deaths from factors like dehydration and heat stroke associated with more frequent heat waves are projected to triple in many urban centers in the U.S. (Epstein and Mills 2005). "With the likelihood of [extreme heat waves] projected to increase 100-fold over the next four decades, it is difficult to avoid the conclusion that potentially dangerous anthropogenic interference with the climate system is already underway . . . by the end of this century, 2003 [in which between 22,000 and 35,000 Europeans died in heat waves] would be classed as an unusually cold summer" (Epstein and Mills 2005). Damage to humans and infrastructure from floods is also predicted to increase (Epstein and Mills 2005).

Scientists have long predicted increasing weather variability and heightened intensity of storms like hurricanes due to increasing ocean temperatures (Epstein and Mills 2005). Extreme weather events have in fact increased, with catastrophic results, both in loss of lives and in economic costs (Epstein and Mills 2005). Global weather related losses from extreme events have increased dramatically since the 1950s, measured in 2004 U.S. dollars (Epstein and Mills 2005). "While no one event is diagnostic of climate change,

the relentless pace of unusually severe weather since 2001– prolonged droughts, heat waves of extraordinary intensity, violent windstorms and more frequent '100 year' floods – is descriptive of a changing climate" (Epstein and Mills 2005).

One of the most troubling recent findings is that the IPCC projection for sea level rise is almost certainly a significant underestimate. Melting of the Greenland ice sheet has accelerated far beyond what scientists predicted even just a few years ago, with melting in 2004 occurring at 10 times the rates observed in 2000 (Epstein and Mills 2005; ACIA 2004; Overpeck et al. 2006). Sea level rise in line with past underestimates would still inundate substantial areas of the coast and have far-reaching consequences. Yet just 2-3° C of additional warming would likely cause sea level to rise by at least 18 feet (6 m) within a century, and would flood vast areas and displace millions of people (Hansen 2006).

In sum, the costs of global warming in terms of human life, biological richness, ecological functions, and money, will be astronomical if greenhouse gas emissions are not significantly reduced.

There is significant new information about climate change that was not considered by the EA or the Resource Management Plans and amendments that it tiers to such that the EA, Plans, and Amendments are not adequate NEPA documents on which to base the decision to open the area to leasing. Moreover, the impacts from greenhouse gas emissions from the proposed actions cannot be analyzed at the APD stage because climate change is clearly a significant impact yet BLM does not intent to prepare an EIS for each APD. Thus, BLM must supplement the EISs for all of the RMPs or Amended RMPs that cover the areas being proposed for lease prior to leasing or must prepare an EIS before making these lands available for leasing.

For example, the 2006 Final Report of the New Mexico Climate Change Advisory Group revealed that oil and gas extraction, transportation and processing contribute approximately 23% of New Mexico's greenhouse gas emissions. See www.nmclimatechange.us, incorporated by reference. A revelation that oil and gas contributes nearly a quarter of New Mexico's greenhouse gas emissions is a significant piece of information that BLM must consider before it leases land to allow additional greenhouse gas emissions. This analysis must consider cumulative impacts as it is almost certain that BLM will not conduct the analysis at the APD stage.

Furthermore, significant new information has come out since the last of the relevant Resource Management Plans was finalized. Perhaps the most significant was the Intergovernmental Panel on Climate Change ("IPCC") Fourth Assessment Report, the final, complete version of which was released in November of 2007. See http://www.ipcc.ch/, incorporated by reference. It is imperative that BLM consider this new information before leasing land that will further contribute to the grave situation we face with regard to climate disruption.

In March of 2008, the Natural Resources Defense Council released a report entitled "Hotter and Drier: The West's Changed Climate." See http://www.nrdc.org/globalWarming/west/contents.asp, incorporated by reference. This report explains:

> Human activities are already changing the climate of the American West. This report by the Rocky Mountain Climate Organization (RMCO) and the Natural Resources Defense Council (NRDC), drawn from 50 scientific studies, 125 other government and scientific sources, and our own new analyses, documents that the West is being affected more by a changed climate than any other part of the United States outside of Alaska. When compared to the 20th century average, the West has experienced an increase in average temperature during the last five years that is 70 percent greater than the world as a whole. Responding quickly at all levels of government by embracing the solutions that are available is critical to minimizing further disruption of this region's climate and economy.

This is extremely significant information which BLM has never considered in a NEPA analysis and never shared with the public in a NEPA analysis.

Other extremely significant information is a statement by NASA's James Hansen, one of the world's leading experts on climate change, in December of 2007 that the safe level for carbon dioxide in the atmosphere is 350 parts per million (ppm) and we are already at 383 ppm. It seems imperative that BLM consider information indicating that we already have dangerous levels of greenhouse gases in the atmosphere prior to authorizing activities that will result in significant increases in emissions of greenhouse gases.

Similarly, there is significant new information about the melting of ice and resulting rise in sea levels. See Attachment 1: 2008 *New York Times* article. As NASA scientist Dr. Eric Rignot stated in January of this 2008, "things are definitely far more serious than anyone would have thought five years ago." *Id.*

This year, the U.S. Climate Change Science Program and the Subcommittee on Global Change Research released their report entitled The Effects of Climate Change on Agriculture, Land Resources, Water Resources, and Biodiversity in the United States. Also, the Scientific Assessment of the Effects of Global Change on the United States: *A Report of the Committee on Environment and Natural Resources National Science and Technology Council* was issued in May of 2008. These reports are two other pieces of very significant information that BLM must consider in this EA.

NEPA requires agencies to take a hard look at new information or circumstances concerning the environmental effects of a federal action even after an EIS has been prepared, and to supplement the existing environmental analyses if the new circumstances "raise[] significant new information relevant to environmental concern." *Portland Audubon Soc'y v. Babbitt*, 998 F.2d 705, 708-09 (9th Cir. 2000). *See Marsh v. Oregon Natural Resource Council,* 490 U.S. 360, 371 (1989) ("It would be incongruous

... with [NEPA's] manifest concern with preventing uninformed action, for the blinders to adverse environmental effects, once unequivocally removed, to be restored prior to the completion of agency action simply because the relevant proposal has received initial approval."). *See also* I.M. 2001-0062 ("If you determine you can properly rely on existing NEPA documents, you must establish an administrative record that documents clearly that you took a 'hard look' at whether new circumstances, new information, or environmental impact not previously anticipated or analyzed warrant new analysis or supplementation of existing NEPA documents and whether the impact analysis supports the proposed action."). In light of the new information discussed below, BLM must address the impacts from climate change prior opening these lands to leasing.

Moreover, BLM and the surface rights agencies have failed to consider the cumulative impacts of greenhouse gas emissions from this decision to open lands to leasing with greenhouse gas emissions from other BLM actions. These other actions include other BLM oil and gas lease sales such as the January 16, 2008 and April 16, 2008 lease sales by the New Mexico State Office of the BLM, Colorado State Office Competitive Oil and Gas Lease Sale on February 14, 2008, as well as recent lease sales in other states such as Utah and Wyoming. These other actions also include BLM's revision of its plan for oil and gas extraction at the Pinedale Anticline in Wyoming and the actions covered in the Great Divide plan revision. These other actions also include the issuance of all Applications for Permits to Drill (APD) for oil and gas activities that are occurring now or are reasonably foreseeable.

Furthermore, the cumulative actions that BLM must consider in terms of greenhouse gas emissions are not limited to oil and gas activities. For example, coal-fired power plants are the largest source of greenhouse gas emissions in the United States. BLM is currently considering the Toquop coal-fired power plant. Emissions of greenhouse gases from this plant, and any other coal-fired power plant BLM is considering, must also be considered in the cumulative impacts analysis. Livestock is also a major source of greenhouse gas emissions. See e.g. Henning Steinfield, Livestocks Long Shadow: Environmental Issues and Options, (2006). Thus, BLM must consider its actions which involve livestock grazing in its cumulative impacts analysis of greenhouse gas emissions.

Coal mining is also a major source of greenhouse gases. This includes the direct impacts of mining the coal and the indirect impacts of transporting, burning and disposing of the coal combustion waste. Therefore, BLM must consider its actions which involve coal mining in its cumulative impacts analysis of greenhouse gas emissions. Until such time as BLM analyzes the cumulative impacts of greenhouse gas emissions from BLM's oil and gas, coal-fired power plant, livestock grazing, and coal mining activities, BLM cannot move forward with opening leasing in the project area.

Furthermore, BLM has also failed to comply with NEPA by failing to consider a reasonable range of alternatives. For example, BLM has failed to consider requiring all gas activities to comply with the U.S. Environmental Protection Agency's (U.S. EPA) GasStar program. U.S. EPA has made clear that this is an alternative that needs to be

considered in the NEPA context to prevent the release of a potent greenhouse gas. See Attachment 2: 2008 Environmental Protection Agency letter.

Finally, BLM has failed to comply with Department of Interior Secretary Order #3226. This order provides:

> Each bureau and office of the Department will consider and analyze potential climate change impacts when . , . when making major decisions regarding the potential utilization of resources under the Department's purview. Departmental activities covered by this Order include . . .planning and management activities associated with oil, gas and mineral development on public lands[.]

BLM is currently in violation of this order because it has not considered and analyzed the potential climate change impacts from the decision to open these lands to leasing.

Utah prairie dog

The Utah prairie dog (*Cynomys parvidens*) is listed as threatened under the Endangered Species Act. This species has not recovered due to the slew of threats it continues to face, including loss and degradation of habitat on public lands. See Attachment 3: Forest Guardians et al. 2003. Petition to the U.S. Fish and Wildlife Service to reclassify the Utah prairie dog as an endangered species under the Endangered Species Act. Submitted to the U.S. Fish and Wildlife Service in February 2003; Attachment 4: Forest Guardians et al. 2007. Comments to the U. S. Fish and Wildlife Service on the Utah prairie dog five-year review. Dated April 22, 2007. BLM lands are of primary importance to the Utah prairie dog, particularly those within the planning area, within the Cedar City Field Office. The planning area is the heart of the Utah prairie dog's range. The Proposed Alternative under this EA fails to provide adequate protection for suitable Utah prairie dog habitat by not sufficiently curtailing oil and gas activities in Utah prairie dog habitat.

Harms from oil and gas activities include loss of habitat from wellpads, roads, pipelines, and other infrastructure; disturbance to Utah prairie dogs from seismic exploration, including hearing loss; proliferation of noxious weeds which displace native plant communities important for prairie dog foraging; road-building, which increases human ingress and the potential for illegal prairie dog shooting; and habitat contamination. Attachment 3, Attachment 5: SUWA and Forest Guardians. Comments on Parowan Gap Geophysical Project EA, BLM Cedar City Field Office. Dated November 2, 2006.

We have previously protested oil and gas leasing in the planning area, and this EA generally fails to rectify the claims we raised in our protest. Attachment 6: Center for Native Ecosystems and Forest Guardians protest of Utah BLM February 2007 oil and gas lease sale. BLM's proposed alternative would result in leasing of extensive amounts of Utah prairie dog habitat despite the clear impediment oil and gas activities present to prairie dog recovery – and even bare survival. The controlled surface use stipulation for the Utah prairie dog provided under the Proposed Action is at p. 73 of the EA:

CONTROLLED SURFACE USE – UTAH PRAIRIE DOG

> No surface use or otherwise disruptive activity would be allowed within 0.5 mile of active prairie dog colonies and potentially suitable, unoccupied prairie dog habitat, identified and mapped by Utah Division of Wildlife Resources or BLM since 1976. Within occupied habitat, speed limits would be restricted to 25 mph on operator-created and maintained roads and/or travel would be restricted and/or travel would be restricted between April 1 and September 30 when prairie dogs are most likely to be found above ground.
>
> Additional mitigation measures to avoid or minimize effects to Utah prairie dogs may be developed and implemented in consultation with the FWS between the lease sale stage and lease development state to ensure continued compliance with ESA.

While we appreciate that this controlled surface use stipulation extends to both occupied and unoccupied (suitable habitat), the Utah prairie dog stipulation does not adequately protect this federally listed species. For instance, oil and gas activities 0.5 miles from Utah prairie dog colonies and potential habitat can impede dispersal by yearling males to nearby colonies, which is a crucial component of Utah prairie dog biology. These oil and gas activities may also fragment lands around habitat suitable for prairie dog occupancy, thereby causing landscape-level degradation and further hindering Utah prairie dog survival and recovery. In addition, oil and gas activities 0.5 miles from Utah prairie dog habitat could result in the proliferation of noxious weeds, particularly cheatgrass, that degrade prairie dog habitat. The quality of forage is an important factor in prairie dog reproduction. See Attachment 3 at pp. 20-21 and 80-92.

In addition, it is not clear that traveling 25 miles per hour down dirt roads through Utah prairie dog occupied habitat in the planning area is a sufficiently low speed limit to prevent prairie dog mortality. BLM should monitor whether that speed limit is preventing prairie dog mortality and adjust it downward if necessary.

More fundamentally, it is unclear why BLM applies a controlled surface use stipulation to parcels containing Utah prairie dog habitat (See EA at p. 11 (Table) and p. 73), rather than applying No Surface Occupancy stipulations to any parcels with Utah prairie dog habitat. A No Surface Occupancy stipulation would be far more effective at preventing harm to this declining, federally listed species than controlled use.

The EA also fails to adequately consider in its discussion of cumulative impacts at pp. 57-59 the cumulative impacts to Utah prairie dogs from other activities authorized on BLM lands, U.S. Forest Service lands, and private and state lands in the planning area. These include harms from livestock grazing and off-road vehicle (ORV) use. Harms from livestock grazing include depletion of forage available for prairie dogs, proliferation of non-native weeds (such as cheatgrass) which provide inadequate nutrition for prairie dogs and outcompete native plants, alteration of fire ecology, shrub encroachment (and

subsequent loss of nutritious forbs and grasses), and destruction of swale habitats upon which Utah prairie dogs depend. See Attachment 3.

Harms to Utah prairie dogs from ORV use include loss of habitat, proliferation of noxious weeds, increased illegal prairie dog shooting, and disturbance of prairie dogs, resulting in interruption of above-ground foraging and other life-sustaining activities. Attachment 3.

The discussion of affected environment fails to disclose with any specificity the adverse impacts to Utah prairie dogs in the planning area from oil and gas leasing and subsequent development. The EA fails to disclose to the public that the core of the Utah prairie dog's range lies in the planning area (EA at pp. 42-44).

The primary approach for Utah prairie dog recovery undertaken by the BLM, U.S. Fish and Wildlife Service, and the Utah Division of Wildlife Resources is the translocation of Utah prairie dogs from private lands to public lands. However, this approach has resulted in low survival rates: FWS reports survival rates of 10%, while the BLM reports survival rates of less than 5%. Attachment 7: U.S. Fish and Wildlife Service Biological Opinion dated December 8, 2006. Attachment 8: Forest Guardians et al. 2005. Administrative Procedure Act petition to the U.S. Fish and Wildlife Service for a rule to significantly restrict translocation of Utah prairie dogs and to terminate the special 4(d) rule allowing shooting of Utah prairie dogs.

While several factors might explain the failure of the translocation program, one important cause is the generally poor condition of habitat on the federal lands – including BLM lands – to which the prairie dogs are being translocated. BLM could, and must, take steps to protect and restore this degraded habitat. Instead, in the EA, BLM proposes to authorize extensive oil and gas activities that could set back Utah prairie dog recovery.

The BLM fails to recognize that Utah prairie dogs face significant threats from drought and climate change. See Attachment 4. Occasional rangewide increases in Utah prairie dog populations are likely tracking precipitation. If predictions of a multi-decadal drought in the southwest come true, there may be long- term declines in Utah prairie dog populations. If there are many wet and warm years, there may be an increased threat from plague. See Attachment 9: Enscore, Russell E. et al. 2002. Modeling relationships between climate and the frequency of human plague cases in the southwestern United States, 1960-1997. Am. J. Trop. Med. Hyg. 66(2):186–196 and Attachment 10: Parmenter, Robert R. et al. 1999. Incidence of plague associated with increased winter-spring precipitation in New Mexico. Am. J. Trop. Med. Hyg., 61(5):814 –821. Given uncertainties either way for the Utah prairie dog, oil and gas (along with other land uses such as livestock grazing and off-road vehicles) should all be circumscribed in anticipation of these broad dynamics over which humans can exert little immediate influence.

The Utah prairie dog is in serious trouble, as prairie dog colonies are disappearing more rapidly than new colonies are being established (naturally or through translocation).

Numbering fewer than 11,000 adults, without upgraded protections and a revised recovery strategy, the Utah prairie dog may well go extinct. See Attachment 4. Especially in the face of climate change, all other anthropogenic threats – including, but not limited to, oil and gas drilling and exploration – must be eliminated. The EA fails to address these threats adequately, therefore violating Endangered Species Act requirements that federal agencies must avoid jeopardizing and promote conservation of listed species. See 16 U.S.C. § 1536(a)(1) and (2).

Frisco buckwheat & Brian Head mountainsnail

We alert BLM to WildEarth Guardians' June 12, 2008 petition to the U.S. Fish and Wildlife Service to emergency list 32 plant and animal species. The Frisco buckwheat and Brian Head mountainsnail were included in our petition and are included in the BLM's EA as occurring or containing habitat within the project area. See Attachment 11: WildEarth Guardians petition to the U.S. Fish and Wildlife Service to Emergency List 32 Species Under the Endangered Species Act. Dated June 12, 2008. Each is found at only one site, and both are critically imperiled. These species clearly qualify for Endangered Species Act protection, and the BLM should not take any actions that would contribute to their imperilment.

Greater sage-grouse

We are very concerned about the proposal to open important habitat for the imperiled greater sage-grouse to leasing absent adequate NEPA analysis of the impacts on greater sage-grouse. We feel that the facts surrounding the proposal to lease greater sage-grouse habitat are illustrative of larger issues with BLM's oil and gas leasing program.

Effects of oil and gas drilling on greater sage-grouse have only recently been investigated, and neither the EA nor the relevant RMP took the potential direct, indirect and cumulative impacts of oil and gas drilling on greater sage-grouse into account. On April 21, 2004, FWS made a positive 90-day finding on several petitions to list the greater sage-grouse under the Endangered Species Act. CNE is one of the greater sage-grouse petitioners. The Service later made a negative 12-month finding. The court then overturned this finding, citing blatant political interference in the decision making process, and ordered FWS to conduct a new status review. It is very important to note that FWS made clear that part of its rationale for not supporting listing, at the time of the 12-month finding, was that draft conservation strategies were in place. It is becoming apparent that these draft conservation strategies will not be sufficient to prevent further declines and eventual listing if the BLM does not address the direct, indirect and particularly cumulative effects of its oil and gas leasing program. The FWS's 90-day finding included the following sections that address the sage-grouse's status and the threat that oil and gas development poses to this species.

> Using our population estimates in the August 24, 2000 Federal Register notice, sage-grouse population numbers may have declined between 69 and 99 percent from historic to recent times (65 FR 51578). The

WSSCSTGTC (1999) estimated the decline between historic and present day to have been about 86 percent. (69 Fed. Reg. 21486 (April 21, 2004))

Sage-grouse populations in Colorado have declined from 45 to 82 percent since 1980. (69 Fed. Reg. 21487 (April 21, 2004))

Proposed coal-bed methane development in the Powder River Basin of Wyoming is expected to result in the loss of 21,711 ha (53,626 ac) of sagebrush shrublands by 2011 (Bureau of Land Management 2003). Current sage-grouse habitat loss in the basin from coal-bed methane is estimated at 2,024 [ha, sic] (5,000 ac) (Braun *et al.* 2002). Although reclamation of short-term disturbances will be concurrent with project development, 'sage-grouse habitats would not be restored to predisturbance conditions for an extended period because of the time need [sic] to develop sagebrush stands with characteristics that are preferred by sage-grouse.' (Bureau of Land Management 2003a). Disturbance to other sage-grouse habitats, such as late summer/brood-rearing areas, was not quantified in the Final Environmental Impact Statement for this project, but 'disturbance would occur to all other habitat types, including nesting, brood rearing, and wintering areas that are located more than 0.25 miles from lek sites' (Bureau of Land Management 2003a). (69 Fed. Reg. 21488 (April 21, 2004))

In addition to the direct habitat loss previously mentioned, associated facilities, roads, and powerlines, as well as noise and increased human activities (*see* discussion under Factor E) associated with mining and energy development, can fragment sage-grouse habitats (Braun 1998; Connelly *et al.* 2000). More chronic impacts are less clear. Lek abandonment as a result of oil and gas development has been observed in Alberta (Connelly *et al.* 2000), and, in the Powder River Basin of Wyoming, leks within 0.4 km (0.25 mi [sic]) of a coal-bed methane well have significantly fewer males compared to less disturbed leks (Braun *et al.* 2002). The network of roads, trails, and powerlines associated with wells and compressor stations decreases the suitability and availability of sage-grouse habitat, and fragments remaining habitats (Aldridge and Brigham 2003). Human activities along these corridors can disrupt breeding activities and negatively affect survival (Aldridge and Brigham 2003). Female sage-grouse captured on leks near oil and gas development in Wyoming had lower nest-initiation rates, longer movements to nest sites, and different nesting habitats than hens captured on undisturbed sites (Lyon 2000; Lyon and Anderson 2003). Lower nest-initiation rates can result in lower sage-grouse productivity in these areas (Lyon and Anderson 2003). Activities which remove live sagebrush and reduce patch size negatively affect all sagebrush obligates (Braun *et al.* 2002). (69 Fed. Reg. 21490 (April 21, 2004))

> As with fences, powerlines provide perches for raptors (Connelly *et al.* 2000; Vander Haegen *et al.* 2002, cited in Knick *et al.* 2003), thereby resulting in sage-grouse avoidance of powerline corridors (Braun 1998). Approximately 9656 km (6,000 mi [sic]) of powerlines have been constructed in sage-grouse habitat to support coal-bed methane production in Wyoming's Powder River Basin within the past few years. Leks within 0.4 km (0.25 mi [sic]) of those lines have significantly lower growth rates than leks further from these lines, presumably as the result of increased raptor predation (Braun *et al.* 2002). The presence of powerlines also contributes to habitat fragmentation, as greater sage-grouse typically will not use areas immediately adjacent to powerlines, even if habitat is suitable (Braun 1998). (69 Fed. Reg. 21490 (April 21, 2004))
>
> Lyon (2000) found that successful sage-grouse hens nested farther (mean distance = 1,138 m) from the nearest road than did unsuccessful hens (mean distance = 268 m) on Pinedale Mesa near Pinedale, Wyoming. (69 Fed. Reg. 21490 (April 21, 2004))
>
> In Wyoming's Powder River Basin, leks within 1.6 km (1 mi [sic]) of coal-bed methane facilities have consistently lower numbers of males attending than leks farther from these types of disturbances. Noise associated with these facilities is cited as one possible cause (Braun *et al.* 2002). (69 Fed. Reg. 21493 (April 21, 2004))

The Service summed up, "This finding is based primarily on the historic and continued destruction, modification, or curtailment of greater sage-grouse habitat or range, and the inadequacy of existing regulatory mechanisms in protecting greater sage-grouse habitats throughout the species' range" (69 Fed. Reg. 21494 (April 21, 2004)).

By opening areas with known greater sage-grouse habitat for lease with inadequate protective stipulations, the BLM is contributing to the need to list this species both through promoting additional habitat destruction and by confirming that its regulatory mechanisms are inadequate to prevent the extinction of the species.

Many of the references cited in FWS's positive 90-day finding were published well after the relevant RMP considered the effects of oil and gas development on greater sage-grouse in Utah, and the EA has failed to remedy this lack of NEPA analysis. Further new information has become available subsequent to the FWS's positive 90-day finding. Four new relevant studies have become available between 2005 and the present, including three peer reviewed studies that have become available in 2007. None of these are discussed or cited in the EA – this is a serious omission, and illustrates that the BLM has failed to take the required "hard look" a the impacts of this decision to open sage-grouse habitat to leasing. Holloran (2005) presents results of a study of greater sage-grouse population response to natural gas field development in Western Wyoming. Naugle et al. (2006a) analyze greater sage-grouse population response to coal-bed methane development in the Powder River Basin. Naugle et al. (2006b) analyze greater sage-

grouse winter habitat selection and energy development in the Powder River Basin. The studies detailed in the unpublished manuscript (Naugle et al. 2006a), and progress report (Naugle et al. 2006b) described above, have been completed and were recently published in peer reviewed journals (Walker et al. 2007, Doherty et al. 2008). Walker et al. (2007) analyze greater sage-grouse population response to energy development and habitat loss. Doherty et al. (2008) analyze the impacts of energy development on winter habitat selection. Finally Walker et al. (2007) estimate infection rate of West Nile virus in a greater sage-grouse population. The Colorado Division of Wildlife (CDOW) recognizes the importance of some of the new information outlined above, in their recent comments on the Colorado BLM's draft Little Snake Resource Management Plan. CDOW recommends substantial changes to the Colorado BLM's draft Little Snake Resource Management Plan, based on this new information (CDOW 2007). The CDOW states that:

> ...more information about the impacts of oil and gas development on sage grouse has been reported since spring, 2006 than was known before. Matt Holloran's work in Wyoming (Holloran 2005) was just beginning to become widely available in the spring of 2006. Holloran found that greater sage-grouse lek attendance declined as oil and gas activity developed with eventual abandonment of leks occurring with time and higher density of gas development. Additionally, he documented that significant additional mortality of adults occurred at higher surface densities. Holloran also suggests that existing greater sage-grouse habitat protection stipulations applied by the BLM in Wyoming are inadequate to protect sage grouse at large scales and high levels of development. Dave Naugle's initial work on effects of oil and gas (coal-bed methane) development on greater sage-grouse in the Powder River Basin was released in June, 2006...His findings are currently undergoing peer review and are expected to be published in a peer reviewed journal soon. His work (Naugle et al. 2006a) supports many of the findings in Holloran (2005) and further fleshes out the surface density at which substantial impacts on greater sage-grouse occur. He reports that impacts on lek attendance began to occur at surface spacings at or above 1 well pad per 640 acres, and those impacts became significant between 1 well pad per 320 acres, and 1 well pad per160 acres... (pg. 3).

CDOW goes on to state that:

> Naugle et al. (2006b) also found that the presence of development affected use of winter ranges by greater sage-grouse. It is becoming widely suggested that surface spacings at or below 1 well pad per 80 acres eventually eliminates greater sage-grouse from these habitats. Naugle et al. (2006a) also report that current BLM stipulations are inadequate to protect greater sage-grouse in the Powder River Basin, where wells are spaced at relatively close densities. He [Naugle] has proposed that the only way to protect greater sage-grouse at a landscape scale in the face of significant oil and gas development is to develop and maintain use areas

> within critical occupied habitat. Dave Naugle is currently employed as a science advisor by BLM in Washington, D.C. for the 2006-2007 academic year. (pg. 4)

The CDOW further states that:

> Evidence from Montana and Wyoming suggests that greater sage-grouse may be extirpated from areas if large refuge areas are not set aside devoid of oil and gas development. (p. 5)

Additionally, the CDOW notes that:

> Research in Wyoming and Montana (Holloran 2005, Naugle et al. 2006a) indicates that current BLM stipulations to protect greater sage-grouse, including .25 mile radius lek buffers are not protecting leks as expected in areas of significant energy development. (p. 9, *emphasis added*)

Finally, on page 16, the DOW notes that:

> Research in Montana and Wyoming has indicated that lease stipulations designed to protect sage grouse, namely timing restrictions on drilling and 0.25 mile no surface occupancy restrictions have not prevented grouse declines in natural gas and coalbed methane fields. (CDOW comments on Colorado BLM's Draft Little Snake RMP). (*emphasis added*)

The Colorado Division of Wildlife is beginning to recognize that existing regulatory mechanisms, including standard lease stipulations, may be inadequate to protect the greater sage-grouse from declines associated with oil and gas development. CDOW states:

> Given the scope and intensity of oil and gas development in the West, listing of Greater sage-grouse under the ESA is likely in the near future if some plan for maintaining them is not developed and funded. (CDOW comments on Colorado BLM's Little Snake Draft RMP)

> Several approaches to mitigating impacts of energy development have been tried or proposed. The classic approach used by BLM who manages leases on Federal mineral rights, is to apply stipulations to protect wildlife (conditions on the operator) at the time the lease is granted. For a variety of reasons, including a weak scientific knowledge base, failure to consider cumulative effects (*emphasis added*), etc., this approach has largely failed. (CDOW comments on Colorado BLM's Little Snake Draft RMP)

The CDOW goes on to state that:

> Creating refuges in time and space is emerging as the leading strategy for reducing impacts, both because stipulations have not been completely effective and because they are very costly to industry...Against this backdrop we were asked to evaluate areas where wildlife values are so high that energy development should not be allowed, either forever or for some period of time. (CDOW comments on Colorado BLM's Little Snake Draft RMP)

The CDOW went on to explore a refuge concept, in which they identify core refuge areas for sage-grouse. They suggest that protection of these core refuge areas be coupled with mitigation of oil and gas development on off-refuge sites is necessary to protect sage-grouse populations. CDOW states that, "Available evidence indicates that sage-grouse are highly sensitive to even low-intensity disturbance associated with energy development, particularly on leks/breeding areas but also on winter range." (CDOW comments on Colorado BLM's Little Snake Draft RMP)

CDOW used the best available evidence including the new evidence outlined earlier in this discussion, to identify core refuge areas for sage-grouse. CDOW states, "In order to identify core refuge areas for sage grouse, the DOW GIS group mapped intersections of three GIS layers: 4-mile buffers around active leks, 5-year average numbers (density) of males on leks, and sage brush patch sizes. This identified areas most critical to sage grouse and presumably other sagebrush obligates."

CDOW then goes on to recommend that, "These core refuge areas would be off-limits to any energy development or production activity until development in non-core areas was completed and successfully rehabilitated."

Utah BLM should follow Colorado Division of Wildlife's example, and seriously take into consideration new information on the potential impacts of oil and gas drilling on greater sage-grouse, and seriously consider not leasing areas within 4 miles of sage-grouse leks.

New evidence also suggests that West Nile virus is a new threat to sage-grouse, and coal bed methane development may increase the odds of exposure to this disease. This also should be analyzed before opening lands to leasing. In addition, the BLM has developed a national plan for sage-grouse conservation, and the Utah BLM should be careful that its leasing program does not preclude conservation measures that may prove necessary to prevent the extinction of this species.

There is clearly new information that should be considered that suggests that potentially significant direct, indirect and cumulative effects to the greater sage-grouse are likely to result from opening these lands to oil and gas leasing. The new information suggests that the lease stipulations generally relied upon by the BLM to prevent significant impacts to sage-grouse are inadequate and will likely result in extirpations. This new information has never been considered in any of the NEPA documents that this decision to open lands to leasing is tiered to. We were not able to find any justification in the EA for the

mitigation measures that the BLM has chosen to rely on to conserve greater sage-grouse. The BLM has not provided any supporting evidence that the proposed lease notices will effectively mitigate impacts to greater sage-grouse. The buffer areas that the agency has selected around leks and the timing limitations have not been connected to any sage-grouse science in the EA, and therefore appear arbitrary.

The Utah BLM is relying upon "Recommended Resource Protective Measures" to mitigate the impacts of oil and gas drilling on sage-grouse to insignificance despite the fact that these measures do not appear to be mandatory (since they are referred to as "recommended") and do not appear to be actual lease stipulations.

Even if these measures are applied as lease stipulations, they do not actually conserve sage-grouse habitat. Timing limitations still allow for the destruction and degradation of sage-grouse habitat. The wording of the Controlled Surface Use measure would only disallow aboveground structures – other types of disturbance evidently would be permitted. The best available science indicates that these measures will not be sufficient to conserve sage-grouse.

In a November 22, 2006 ruling on Center for Native Ecosystems' appeal of Utah BLM's March 17, 2003 denial of CNE's February 3, 2003 oil and gas lease sale protest, the IBLA states that, "leasing without stipulations requiring no surface occupancy constitutes an irreversible and irretrievable commitment to permit surface disturbing activity" (170 IBLA 331).

Neither this EA nor any of the other NEPA documents that this decision to open lands to leasing is tiered to directly consider the potential direct, indirect and cumulative effects of oil and gas drilling on greater sage-grouse habitat, or address significant new information available on the status of this species and the likely impacts of widespread oil and gas development on the status of this species, nor does the record demonstrate that the agency took the necessary "hard look" to determine whether these new circumstances and information warranted new analysis or supplementation of existing NEPA documents. Further, it is not proper to rely on the "recommended resource protective measures" to determine that the decision to open lands to leasing is not likely to have significant adverse effects on greater sage-grouse. In the same finding discussed above, the IBLA states that:

> A finding that impacts of issuing an oil and gas lease would not be significant due to the mitigative effects of a ...stipulation must be based on NEPA analysis. The stipulation does not provide a basis for deferring an environmental analysis in the absence of an existing NEPA statement that includes an analysis of the mitigative effects of the stipulation (170 IBLA 332)...Although BLM attached a stipulation to the leases for the protection of special status species, BLM has identified no NEPA document containing an analysis of the mitigative effect of that stipulations...

The BLM has still failed to comply with NEPA's procedural requirement to prepare an environmental analysis describing the effects of the proposed action on the greater sage-grouse, or the adequacy of its stipulation to mitigate potential impacts of leasing these lands for oil and gas development. This failure may result in an irreversible and irretrievable commitment of resources, and in BLM contributing to the need to list the greater sage-grouse under the ESA – especially given that the best available scientific information suggests that the measures relied upon are utterly inadequate to mitigate impacts to greater sage-grouse to insignificance.

Walker et al. (2008) find that "Seasonal restrictions on drilling and construction do not address impacts caused by loss of sagebrush and incursion of infrastructure that can affect populations over long periods of time."

Thus, The BLM must conduct NEPA analysis and take a "hard look" at how its oil and gas program is affecting the greater sage-grouse. Additional decisions permitting leasing should not occur in any sage-grouse habitat until the BLM finishes this analysis and the Field Offices responsible for management of sage-grouse habitat reevaluate their management of this species, including their oil and gas programs.

The BLM's management of the sage-grouse has already resulted in major declines across the species' range. The BLM is clearly contributing to the need to list this species by moving forward with leasing in important greater-sage grouse habitat without taking the required 'hard look' at the potential direct, indirect and particularly cumulative impacts. Opening lands to leasing in important sage-grouse habitat before the BLM has done the appropriate NEPA analysis, and before RMP revision is complete, is highly inappropriate, and violates NEPA's prohibition on interim actions. The BLM must ensure that its activities do not contribute to the need for ESA listing, and must meet its sensitive species obligations for sage-grouse.

Pygmy rabbit

The pygmy rabbit in Utah is already greatly reduced in both numbers and range. Pygmy rabbit habitats in Utah are currently being further fragmented and reduced from large-scale vegetation treatments that target the mature and old growth sagebrush required by the pygmy rabbit. State and federal agencies are promoting such projects, and greatly adding to the imperilment of the pygmy rabbit in Utah.

Domestic livestock grazing disturbance occurs across nearly all pygmy rabbit habitats in Utah – altering the composition, function and structure of habitats required by the pygmy rabbit.

Oil and Gas leasing will cause a wide range of harms to the pygmy rabbit, including:

- Disturb fragile soils and microbiotic crust and promote weed invasions. Surveys have found pygmy rabbits absent from areas invaded by cheatgrass (Weiss and

Verts 1984).[1]

- Collapse burrows, including shallow natal burrows.
- Crush and simplify the dense and complex canopy cover of mature and old growth sagebrush required by the pygmy rabbit.
- Create new open pathways for human disturbance and recreational or OHV use that will further disturb rabbits, spread weeds, and retard recovery of soils and vegetation from initial exploration disturbance.
- Create new open pathways for domestic cattle and other livestock grazing disturbance. Cattle are known to collapse pygmy rabbit burrows. See Attachment 12: Federal Register 68, Vol. 43 10388, 10400.
- Fragment and reduce continuous sagebrush cover, and cut linear swaths and corridors of crushed vegetation resulting from cross country exploratory activities. This will create new travel paths for ground-based predators, and reduce sagebrush screening cover essential to hide rabbits from aerial predators.

The Cedar City area is of particular importance to the pygmy rabbit in Utah. Janson (2002) re-visited old study sites where he had conducted graduate work in the late 1940s, and found extensive areas of habitat had been altered and reduced, and recreational housing development and other human uses was encroaching on much of what remained.[2]

The full effects of much of this activity, including noise, on pygmy rabbits are not understood or disclosed in the EA. Elements of Oil and Gas Exploration include gravity surveys, geomagnetic surveys, seismic reflection surveys that send shock waves into the earth, thumper and vibrator methods that pound or vibrate the earth to create a shock wave, 67,000 pound vibrator buggies with four feet wide tires traveling parallel crosscountry, periodically thumping and vibrating. Shothole prospects use drill buggies on rough terrain and drill trucks on flatter landscape. Holes are drilled to 80 to 200 feet, explosive charges are detonated to generate seismic waves. Helicopters carry portable drill rigs into rough terrain or place charges on wooden sticks and detonate lines of charges above ground, with operations carried out in large grids. Off-road cross-country travel is allowed, and motor graders or bulldozers could be used to access remote areas. Several trips a day are made along seismograph lines. For a small native mammal that inhabits a localized area where such activity would occur, the disturbance would be severe.

Pygmy rabbits are already greatly restricted in distribution in the Cedar City area, as so much of the critical mature and old growth sagebrush – that takes over a half a century or more to recover from disturbance – has been lost.

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[1] Weiss, N. T., and B. J. Verts. 1984. Habitat and Distribution of Pygmy Rabbits *(Sylvilagus idahoensis)* in Oregon. Great Basin Naturalist 44: 563-571.

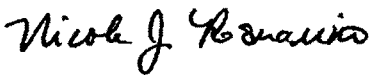
[2] Janson. R. C. 2002. The pygmy rabbit from Utah to Montana. University of Montana. Cooperative Wildlife Research Unit. Missoula, MT. See also Janson, R.G. 1946. A survey of the rabbits of Utah with reference to their classification, distribution, life histories and ecology. MS Thesis. UtahState Agricultural College, Logan, UT. {Note: some pages illegible on microfiche.}

These impacts to pygmy rabbits are not sufficiently disclosed, considered, or addressed in the EA.

Conclusion

As we have discussed, the EA is legally deficient, as it fails to take a hard look at or disclose the significant impacts the Proposed Action will have on the environment, including impacts to species habitats and exacerbation of climate change. In addition, an EIS is required given the geographic scope and impacts entailed. Most importantly, however, we urge the BLM not to lease these lands given the significant environmental harms that will occur from leasing.

Sincerely,



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List of Attachments

Attachment 1: Revkin, Andrew C. 2008. In Greenland, ice and instability. New York Times, dated January 8, 2008.

Attachment 2: Environmental Protection Agency letter to Bureau of Indian Affairs, dated January 2, 2008.

Attachment 3: Forest Guardians et al. 2003. Petition to the U.S. Fish and Wildlife Service to reclassify the Utah prairie dog as an endangered species under the Endangered Species Act. Submitted to the U.S. Fish and Wildlife Service in February 2003.

Attachment 4: Forest Guardians et al. 2007. Comments to the U. S. Fish and Wildlife Service on the Utah prairie dog five-year review. Dated April 22, 2007.

Attachment 5: SUWA and Forest Guardians. Comments on Parowan Gap Geophysical Project EA, BLM Cedar City Field Office. Dated November 2, 2006.

Attachment 6: Center for Native Ecosystems and Forest Guardians protest of Utah BLM February 2007 oil and gas lease sale.

Attachment 7: U.S. Fish and Wildlife Service Biological Opinion dated December 8, 2006.

Attachment 8: Forest Guardians et al. 2005. Administrative Procedure Act petition to the U.S. Fish and Wildlife Service for a rule to significantly restrict translocation of Utah prairie dogs and to terminate the special 4(d) rule allowing shooting of Utah prairie dogs.

Attachment 9: Enscore, Russell E. et al. 2002. Modeling relationships between climate and the frequency of human plague cases in the southwestern United States, 1960-1997. Am. J. Trop. Med. Hyg. 66(2):186–196.

Attachment 10: Parmenter, Robert R. et al. 1999. Incidence of plague associated with increased winter-spring precipitation in New Mexico. Am. J. Trop. Med. Hyg., 61(5):814 –821.

Attachment 11: WildEarth Guardians petition to the U.S. Fish and Wildlife Service to Emergency List 32 Species Under the Endangered Species Act. Dated June 12, 2008.

Attachment 12: Listing Rule for Columbian Basin Distinct Population Segment of the Pygmy Rabbit. 68 FR 10388-10409.